

Appl. No. 10/747,924  
Amdt. dated November 10, 2005  
Reply to Office Action of August 10, 2005

### **REMARKS/ARGUMENTS**

Applicant's attorney thanks the Examiner for his comments and thoughtful analysis of the present application. Claims 1-34 are presented for the Examiner's consideration. Claim 4 has been amended to include the word "the" to provide better sentence structure. Claims 11 and 12 have been amended to replace the term "complimentary" with the term "like". Support for these amendments can be found on page 6, line 18 of the present disclosure. Claim 16 has been amended to replace the word "lease" with the word "least" to correct a misspelling. Claim 18 has been amended to replace the word "composite" with the word "article". Support for this amendment can be found on page 7, lines 24-25 of the present disclosure. Claims 20-34 have been withdrawn.

In response to the restriction requirement, the Applicant elects, with Traverse, Group I (claims 1-19) drawn to an absorbent composite. Non-elected claims 20-34 have been withdrawn. However, Applicant asserts that since Group I, Group II and Group III all contain claims pertaining to an absorbent composite, withdrawn claims 20-34 should be re-joined, and Applicant respectfully requests that the Restriction be withdrawn.

By way of the Office Action mailed August 10, 2005, the Examiner rejected claims 7-10 under 35 U.S.C. § 112, second paragraph, for allegedly failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. This rejection is respectfully **traversed** to the extent that it may apply to the presently presented claims.

The Examiner states that the term "increased" is a relative term and is not defined by the claim, and that the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Applicant respectfully disagrees. Lines 15-17 of page 6 of the present disclosure are directed to "conventional" (i.e., untreated) superabsorbent technologies. In comparison, lines 17-36 of page 6 of the present disclosure, for example, are directed to the invention, which includes components of an absorbent composite that are "*treated*" to achieve desired repulsive forces, which in turn result in increased flow channels, increased permeability and increased swelling thickness. Further,

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claim 1 requires that the components of the composite are treated. Therefore, it would be clear to one of ordinary skill in the art that composites of the present invention, as claimed, are being compared to conventional composites with "*untreated*" components. For at least these reasons, Applicant submits that this rejection of claims 7-10 has been overcome, and Applicant respectfully requests that the rejection of these claims under 35 U.S.C. § 112 be withdrawn.

By way of the Office Action mailed August 10, 2005, the Examiner rejected claims 11 and 12 under 35 U.S.C. § 112, second paragraph, for allegedly failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. This rejection is respectfully **traversed** to the extent that it may apply to the presently presented claims.

The Examiner states that claims 11 and 12 recite a "complimentary charge", but do not provide guidance as to how the charges would be acquired by the SAP/fibers or what is meant by complimentary. Applicant has amended claims 11 and 12 to replace the term "complimentary" with the term "like". Support for this can be found at line 18 on page 6 of the present disclosure. With respect to guidance as to how the charges would be acquired by the SAP/fibers, Applicant notes that claims 11 and 12 incorporate the limitations of claim 1, which provides such guidance. For at least these reasons, Applicant submits that this rejection of claims 11 and 12 has been overcome, and Applicant respectfully requests that the rejection of these claims under 35 U.S.C. § 112 be withdrawn.

By way of the Office Action mailed August 10, 2005, the Examiner rejected claim 18 under 35 U.S.C. § 112, second paragraph, for allegedly failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. This rejection is respectfully **traversed** to the extent that it may apply to the presently presented claims.

The Examiner states that it is unclear how the composite may be selectively segregated within the same composite. Applicant's attorney recognizes and apologizes for this oversight. Applicant has therefore amended claim 18 to state that the composite is selectively segregated within said "article". Support for this amendment can be found at lines 24-25 on page 7 of the present disclosure. For at least these reasons, Applicant submits that this rejection of claim 18 has

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been overcome, and Applicant respectfully requests that the rejection of these claims under 35 U.S.C. § 112 be withdrawn.

By way of the Office Action mailed August 10, 2005, the Examiner rejected claims 1-19 under 35 U.S.C. § 112, second paragraph, for allegedly failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

The Examiner makes reference to *Ex parte Slob*, which states that the claim for a liquefiable substance was "too broad and indefinite since it purports to cover everything which will perform the desired functions regardless of its composition..." Applicant submits that claims 1-19 do not fall within the same circumstances as *Ex parte Slob*. In contrast to *Ex parte Slob*, Applicant's independent claim 1 has a limitation which requires the existence of surface charges on the the components of the absorbent composite. In addition, these charges are further limited to those which create repulsive forces between the components. Dependent claims 2-19 add even further limitations to the invention. Thus, it can be seen that claims 1-19 do not fall under the scenario of *Ex parte Slob*, but in fact meet the requirements of 35 U.S.C. § 112. For at least these reasons, Applicant submits that this rejection of claims 11 and 12 has been overcome, and Applicant respectfully requests that the rejection of these claims under 35 U.S.C. § 112 be withdrawn.

By way of the Office Action mailed August 10, 2005, the Examiner rejected claims 1-19 under 35 U.S.C. § 112, first paragraph, for allegedly not providing enablement for the claimed absorbent composites. This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

Applicant points out that the specification of the present disclosure includes a description of the components which can be used to form the absorbent composite, as well as a description of treatments which can be utilized to create repulsive forces. (See e.g., page 3, lines 6-8; page 7 line 27 to page 8, line 24; and page 8, line 35 to page 9, line 22.) In addition, several examples are provided in the present disclosure, found under the heading labeled "Experiment", which provide guidance as to treating the components of an absorbent composite to create repulsive forces, as well to form an absorbent composite out of such components. Therefore, the requirements of 35

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U.S.C. § 112, first paragraph, have been met. For at least these reasons, Applicant submits that this rejection of claims 1-19 has been overcome, and Applicant respectfully requests that the rejection of these claims under 35 U.S.C. § 112 be withdrawn.

By way of the Office Action mailed August 10, 2005, the Examiner rejected claims 1-12 and 15-19 under 35 U.S.C. § 102 as allegedly being anticipated and thus unpatentable over U.S. Patent Number 6,562,743 to Cook et al. This rejection is respectfully **traversed** to the extent that it may apply to the presently presented claims.

In accordance with MPEP § 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Cook et al. is directed to coating fibers with a polyvalent metal ion-containing compound, incorporating the coated fibers into an absorbent core, and exposing the core to a liquid such that the polyvalent metal ions contact the surface of superabsorbent particles, which then **inhibits the rate of swelling** of the superabsorbent particles. In other words, there is a restrictive, or constrictive force, required in order for the invention of Cook et al. to work. (See e.g., Cook et al., column 4, lines 8-19). In contrast, Applicant's invention is directed to treating at least one component of an absorbent composite (e.g., superabsorbent materials and/or fibers) such that a repulsive force, in the form of like surface charges, forms between the components within the absorbent core, which **promote the expansion** of the composite. (See e.g., Present Disclosure, page 6, lines 17-36; and claim 1). Thus one of ordinary skill in the art could reasonably conclude that the invention of Cook et al. is not the same as the invention of Applicant. In addition, Cook et al. make no reference to surface charges or to repulsive forces between the components of an absorbent composite upon fluid insult of the composite, as required in at least independent claim 1 of the present invention. Thus, Cook et al. does not set forth each and every element of Applicant's invention, as required by MPEP § 2131. Applicant submits that this rejection of claims 1-12 and 15-19 has been overcome, and Applicant respectfully requests that the rejection of these claims under 35 U.S.C. § 102 be withdrawn.

With respect claims 4, 5, 6, 15, and 16, these claims are not anticipated since they are dependent upon a patentable independent claim, as discussed above. If a given reference does not anticipate the limitations of the independent claim, then any claim depending from the independent claim is not anticipated. See e.g., *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988). For

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at least these reasons, Applicant submits that this rejection of claims 4, 5, 6, 15 and 16 has been overcome, and Applicant respectfully requests that the rejection of these claims under 35 U.S.C. § 102 be withdrawn.

By way of the Office Action mailed August 10, 2005, the Examiner rejected claims 13 and 14 under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 6,562,743 to Cook et al. in view of U.S. Patent Number 5,147,343 to Kellenberger. This rejection is respectfully ~~traversed~~ to the extent that it may apply to the presently presented claims.

In accordance with MPEP § 2142, the Examiner has the burden of establishing a *prima facie* case of obviousness by meeting three criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicants' disclosure. *In re Vaeck*, 947 F.2d 4899 (Fed. Cir. 1991). The Examiner states that Kellenberger discloses an absorbent composite having 57% of the superabsorbent particles between 300 and 600 micrometers. However, combining the teachings of Kellenberger with Cook et al. does not overcome the deficiencies of Cook et al., as discussed above. Thus, the third prong of MPEP § 2142 (i.e., the references must teach or suggest all the claim limitations) has not been met. For at least these reasons, Applicant submits that the Examiner has not met his burden of establishing a *prima facie* case of obviousness, and Applicant respectfully requests that the rejection of claims 13 and 14 under 35 U.S.C. § 103 be withdrawn.

By way of the Office Action mailed August 10, 2005, the Examiner provisionally rejected claims 1, 3, 4, 5, 7-10 and 15-19 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claim 8 of copending Application No. 10/734,004. However, the Examiner has not indicated any allowable claims with regard to Application No. 10/734,004. Therefore, Applicants do not wish to act upon this provisional rejection at this time.

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However, at such time that claims are indicated as being allowed in Application No. 10/734,004, Applicants will then review the allowed claims and proceed accordingly

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-4405.

Respectfully submitted,  
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#### CERTIFICATE OF TRANSMISSION

I, Bryan R. Rosiejka, hereby certify that on November 10, 2005 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

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